

Rotterdam Convention

Abstract

The proposal to add Annex VIII parallel to the Annex III in the Rotterdam Convention is fraught with many dangers. Besides bringing in a plethora of procedural difficulties, it has the potential to upset the delicate balance struck within the Rotterdam Convention and the careful balance between the rights and obligations under the WTO Agreements, such as non-discrimination. It may place certain countries at a *de facto* disadvantage in the international trade of agricultural commodities treated with Annex VIII pesticides.

Relationship between the WTO and the Rotterdam Convention

Both the World Trade Organization (WTO) and the Rotterdam Convention (RC) govern the international trade. While the WTO governs trade in all goods, the RC governs trade in certain chemicals listed in the Convention.

The WTO is member driven with decisions taken by consensus among all member governments. In the RC too, substantive decisions that impact international trade, such as listing chemicals in Annex III are taken by consensus.

The objective of sustainable development and seeking to protect the environment are fundamental to the WTO. These go hand in hand with the WTO's objective to reduce trade barriers and eliminate discriminatory treatment in international trade.

The preamble to the RC also recognizes this and states that trade and environmental policies should be mutually supportive with a view to achieving sustainable development.

There is, therefore, a strong umbilical connection between the two. It is for this reason that the text

of the RC is drafted in a WTO compatible language.

Under the WTO rules, members can adopt trade related measures provided several conditions to avoid misuse of such measures for protectionist purpose are fulfilled. This is of relevance since a vast majority of parties to the RC are also members of the WTO. Nothing can be done in the RC that would directly or indirectly add or diminish the parties' obligations under the WTO.

The RC cannot be interpreted and implemented in clinical isolation of the core principles of the WTO such as consensus, non-discrimination, impartiality, predictability, and reciprocity. The RC can't operate in a secluded world untouched by the rules of the WTO.



About the proposal to add a new Annex VIII to the RC



Switzerland, Australia, and Mali have recently submitted a proposal to the Secretariat of the RC to add a new Annex VIII to the RC. This will come up for consideration by the 11th Meeting of the

Conference of Parties (COP) scheduled to be held from 1st May-12th May 2023 in Geneva.

The proposed new Annex VIII, if adopted by the COP, will be in addition to the existing Annex III. The difference between the two is that while the listing of chemicals in Annex III will continue be by consensus, the listing in Annex VIII will not require consensus among the parties.

Many parties to the RC such as Argentina, China, India, and others have expressed strong apprehensions about the proposed Annex VIII. The USA (a non-party) has opposed it too. The apprehensions expressed include:

- ★ There will be confusion, uncertainties and misunderstanding in the international trade from the presence of two trade restrictive Annexes (III and VIII) in the RC.
- ★ It would undermine the core principle of the consensus which is fundamental.
- ★ Private standard setting bodies in agricultural trade would give Annex VIII chemicals the legitimacy of PIC list leading to use and trade bans.
- ★ Listing chemicals in Annex VIII would offer disproportionate advantage to a select group of countries.
- ★ Listing chemicals in Annex VIII would not maintain the much-needed procedural integrity and balance.
- ★ Listing of chemicals in Annex VIII would give CRC recommendations a *de facto* listing rights without the consensus by the COP.
- ★ Listing chemicals in Annex VIII without consensus raises several questions on shared responsibilities in managing chemicals embedded in the Convention.
- ★ This would aid lobbying by vested interests targeting certain chemicals in the international trade.
- ★ Having two Annexes with two different sets of chemicals would make the implementation by the parties cumbersome and chaotic.
- ★ The addition of Annex VIII requires several changes in the text of the originally finalized, WTO compatible text of the RC. The textual changes would only confound the confusion.

Addition of Annex VIII will facilitate unjustifiable discrimination. It may place certain countries at a *de facto* disadvantage in the international trade of agricultural commodities treated with Annex VIII pesticides. Besides, the pesticides listed in Annex VIII may also receive discriminatory treatment in the international trade. The net gainer could be the European Union, the largest exporter of chemicals (\$1,263 bn) and agricultural commodities (\$761 bn) in the world (2021). The Europe has the distinction of having submitted the maximum number of notifications to the RC.

Role of the RC Secretariat. Flagrantly biased

The web page of the Secretariat of the Rotterdam Convention carries the link to a video that propagates the virtues of adding Annex VIII. The video is one sided and highly biased. It carefully hides the dark side of the Annex VIII. It is surprising that the Convention's Secretariat should play the role of propagandist ahead of the COP. Isn't the Secretariat expected to be opinion neutral ahead of the decision by the COP? Isn't the Secretariat bound by the legal principle *nemo iudex in causa sua*, the rule against bias? No one should be a judge in their own cases. The principle of natural justice *audi alteram partem* (hear the other side) also applies here.

“ Nothing is agreed
until everything
is agreed ”

- Nov 2001 Doha Round of
WTO Ministerial Conference

Every stepwise procedure
in the RC is part of a
whole and indivisible.

The proposal to add
Annex VIII is divisive.

Way Forward:

The Conference of the Parties (COP) at their 11th meeting (1st May – 12th May 2023) shall duly consider the perils of having Annex VIII parallel to Annex III. Ideally, the proposed amendment is to be rejected in toto, never to come back in any new avatar.

For Further information



S. Ganesan
Chairman (International Treaties Expert Committee)
Indian Chemical Council, India
ganesanicc@gmail.com / +91 9959552725



ICC
Indian Chemical Council